

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

RICKY A. FULLER and  
THERESA A. FULLER,

Plaintiffs,

v.

ORDER  
07-CV-330

SUMMIT TREESTANDS, LLC,

Defendant.

---

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1). Defendant filed a motion to preclude testimony and reports of plaintiffs' liability expert on August 20, 2008, and a motion for summary judgment on August 21, 2008. On September 15, 2008, plaintiffs filed a cross-motion to extend the deadlines in the Amended Case Management Order. On November 12, 2008, Magistrate Judge McCarthy filed a Report, Recommendation and Order, in which he denied defendant's motion to preclude and granted plaintiffs' motion to extend the deadlines in the Amended Case Management Order. The Magistrate Judge also recommended that defendant's motion for summary judgment be denied.

Defendant filed objections to the Report, Recommendation and Order on November 24, 2008, and plaintiffs filed a response thereto. Oral argument on the objections was held on February 24, 2009.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law." The Court has reviewed defendants' objections and Magistrate Judge McCarthy's Order. Upon such review and after hearing argument from counsel, the Court finds that Magistrate Judge McCarthy's Order is neither clearly erroneous nor contrary to law.

Accordingly, the Court affirms the Order.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report, Recommendation and Order, defendant's motion for summary judgment is denied.

The case is referred back to Magistrate McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA

CHIEF JUDGE

UNITED STATES DISTRICT COURT

DATED: February 25, 2009